



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: January 20, 2017
MAHS Docket No.: 16-017759
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on January 12, 2017, from Lansing, Michigan. [REDACTED] [REDACTED] the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by [REDACTED] Case Manager. [REDACTED] Family Independence Manager, and [REDACTED] Career Coach, appeared as witnesses for the Department.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-20. At Petitioner's request, the record was left open for two days for Petitioner to fax in her additional documentation showing how long her commute would be. No additional documentation was received. Accordingly, a decision will be made based on the available evidence.

ISSUE

Did the Department properly close and sanction the Petitioner's Family Independence Program (FIP) case for noncompliance with Partnership, Accountability, Training, Hope (PATH) program requirements?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner was a recipient of FIP benefits and a mandatory PATH participant.

2. Petitioner had a prior FIP noncompliance for a non-cooperation date of November 19, 2015, and sanction period of January 2016 through March 2016. (Exhibit A, p. 20)
3. On October 13, 2016, Petitioner completed the 21-day application eligibility period (AEP) and was given information regarding attending PATH orientation on October 17, 2016, at 9:00 am. (Exhibit A, p. 8; Career Coach Testimony)
4. Petitioner did not attend the PATH orientation on October 17, 2016. Petitioner called and left a message that she was unable to attend due to lack of child care and transportation. (Exhibit A, p. 7)
5. On October 17, 2016, a noncompliance warning was issued to Petitioner because she failed to attend the PATH orientation as instructed. Petitioner was to attend a reengagement meeting on October 21, 2016, at 9:30 am. (Exhibit A, pp. 7 and 10)
6. On October 21, 2016, Petitioner attended the reengagement meeting and signed the PATH Reengagement Agreement. Petitioner was instructed to attend PATH orientation on October 24, 2016, at 9:00 am. (Exhibit A, pp. 7 and 11)
7. Petitioner did not attend the PATH orientation on October 24, 2016, and was assigned to triage. (Exhibit A, pp. 7 and 12)
8. On October 24, 2016, the Department issued Petitioner a Notice of Noncompliance (DHS-2444) based on no participation in required activity. It was noted that this was a second non-compliance and the penalty would be a case closure for at least six months. (Exhibit A, pp. 5-6)
9. A triage meeting was held on November 2, 2016, and no good cause was found. (Exhibit A, p. 7)
10. On November 18, 2016, Petitioner filed a request for hearing contesting the Department's action. (Exhibit A, pp. 2-4)

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of

Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

FIP is temporary cash assistance to support a family's movement to self-sufficiency. The recipients of FIP engage in employment and self-sufficiency related activities so they can become self-supporting. BEM 230 A, October 1, 2015, p. 1.

Federal and state laws require each work eligible individual (WEI) in the FIP group to participate in Partnership, Accountability, Training, Hope (PATH) or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. BEM 230 A, p. 1. A WEI who refuses, without good cause, to participate in assigned employment and/or other self-sufficiency related activities is subject to penalties. BEM 230 A, p. 1.

A WEI and non-WEIs¹, who fails to participate in employment or self-sufficiency-related activities without good cause, must be penalized. Depending on the case situation, penalties include the following: delay in eligibility at application; ineligibility (denial or termination of FIP with no minimum penalty period); case closure for a minimum of three months for the first episode of noncompliance, six months for the second episode of noncompliance, and lifetime closure for the third episode of noncompliance. The goal of the FIP penalty policy is to obtain client compliance with appropriate work and/or self-sufficiency related assignments and to ensure that barriers to such compliance have been identified and removed. The goal is to bring the client into compliance. BEM 233A, April 1, 2016, p. 1.

Noncompliance of applicants, recipients, or member adds includes, without good cause, failing or refusing to: appear and participate with PATH or other employment service provider; participate in employment and/or self-sufficiency-related activities; and participate in required activity. BEM 233A, p. 2.

Good cause is a valid reason for noncompliance with employment and/or self-sufficiency related activities that are based on factors that are beyond the control of the noncompliant person. A claim of good cause must be verified and documented for member adds and recipients. Good cause includes: no child care; no transportation; and long commute. BEM 233A, pp. 4 and 5 (underline added by ALJ). Specifically:

No Child Care

The client requested child care services from MDHHS, PATH, or other employment services provider prior to case closure for noncompliance and

¹ Except ineligible grantees, clients deferred for lack of child care, and disqualified aliens. See BEM 228.

child care is needed for an eligible child, but none is appropriate, suitable, affordable and within reasonable distance of the client's home or work site.

- **Appropriate.** The care is appropriate to the child's age, disabilities and other conditions.
- **Reasonable distance.** The total commuting time to and from work and the child care facility does not exceed three hours per day.
- **Suitable provider.** The provider meets applicable state and local standards. Also, unlicensed providers who are not registered/licensed by the MDHHS Bureau of Children and Adult Licensing must meet MDHHS enrollment requirements; see BEM 704.
- **Affordable.** The child care is provided at the rate of payment or reimbursement offered by MDHHS.

No Transportation

The client requested transportation services from MDHHS, PATH, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client.

Long Commute

Total commuting time exceeds:

- Two hours per day, not including time to and from child care facilities **or**
- Three hours per day, including time to and from child care facilities.

BEM 233A, pp. 4 and 5.

PATH participants will not be terminated from PATH without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. Good cause is determined based on the best information available during the triage and prior to the negative action date. Good cause may be verified by information already on file with MDHHS or PATH. Good cause must be considered even if the client does not attend, with particular attention to possible disabilities (including disabilities that have not been

diagnosed or identified by the client) and unmet needs for accommodation. BEM 233 A, pp. 9-10.

In this case, it was uncontested that Petitioner did not attend PATH orientation on October 24, 2016. A triage meeting was held on November 2, 2016, and no good cause was found. (Exhibit A, p. 7) Petitioner alleges good cause for this noncompliance based on no child care; no transportation; and long commute. (Petitioner Testimony)

The Department noted that starting at the beginning of the 21 day AEP, issues regarding child care and transportation are discussed and addressed. Petitioner was approved for the Child Development and Care (CDC) program through the Department and was been given a list of 44 CDC providers. Petitioner was also given gas money to address transportation. Further, after failing to attend PATH orientation on October 17, 2016, Petitioner was given a warning, attended the reengagement meeting, and signed the PATH Reengagement Agreement. Accordingly, the Department did not find good cause for Petitioner's failure to attend PATH orientation on October 24, 2016. (Exhibit A, pp. 7, 10-11, and 13-18; Testimony)

Petitioner described the problems she has had finding child care for her five children, ages 1, 2, 3, 8, and 9. Petitioner indicated that she had a family friend lined up to provide child care, but that person ended up declining to provide child care because they were unwilling to participate with the CDC program because the payments take too long. Petitioner indicated this person had been written down on the paper that she provided to the Career Coach. (Petitioner Testimony) It is noted that this problem with the family friend providing child care was not listed on any of the submitted documentation from the AEP addressing child care arrangements. (Exhibit A, pp. 13-18)

Petitioner's testimony indicated her two oldest children attend school, and another child is in a Head Start program. Therefore, child care for these children must allow for them to be able to get to school. Petitioner asserted she has called all 44 CDC providers on the list, none can get her kids to school and there are waiting lists. Petitioner noted that of the 44, only five CDC providers are professional day care centers with a van, and Petitioner asserted that they all have a waiting list. Further, of those five day care centers, only three would be able to take the older children to their specific school. Petitioner acknowledged that it was suggested to her to consider a home day care in the area of the school so they could utilize the school bus for transportation to and from school. Petitioner noted that home CDC providers have a limit of six children and she has five children. Further, even if Petitioner only used this type of CDC provider for her two oldest children, most of the providers start out with no openings period. Petitioner testified that she remains on the waiting list for the three day care centers that will take her school age children to their school. (Petitioner Testimony) The submitted child care search documentation from the application eligibility period is not sufficient to fully support Petitioner's testimony. (Exhibit A, pp. 13-18) One AEP Child Care Research

Form lists what appear to be the five child care centers, but no dates or times were listed for any attempt to contact them. The only other note on this form appears to be a question about one center having a copay. (Exhibit A, p. 13) The second AEP Child Care Research Form lists the same five child care centers and indicates contact attempts on October 3, 2016, specifically: one center did not answer and again questioning a copay for this center; two centers did not have openings; and two centers had openings with a follow up note regarding up to date shot records for these centers. (Exhibit A, p. 14) The Barrier Resolution Activities Sheet and the three PATH Assignments Plans for each week of the application eligibility period each only contained a vague indication that Petitioner was working on child care research. (Exhibit A, pp. 15-18) It is noted that there is no documentation showing any attempts to contact any of the home CDC providers.

Additionally, regarding transportation, Petitioner testified that her mother does not have a car that will fit enough passengers to transport Petitioner and all five of her children to child care and the PATH program. Petitioner also indicated it is rather far for her mother to commute for the \$3.00 per day in gas money. Petitioner testified that she was able to go the first three weeks for the AEP because she did not have to be there promptly at 8:00 am, so three of the children were already at school. Therefore, she could finagle rides with her mother throughout the day. (Petitioner Testimony) It is noted that the Department's documentation indicates that the PATH orientation Petitioner failed to attend was at 9:00 am. (Exhibit A, p. 7)

Lastly, regarding the long commute time, Petitioner's testimony indicated the bus system website estimates her commute using the closest daycare provider, which did not even have any openings, would be about 12 minutes under the 3 hour limit. Petitioner asserts that it actually took three times longer the day she tried it one way walking with her five children to the bus stop. (Petitioner Testimony) The record was left open for two days for Petitioner to provide documentation showing how long her commute would be using the bus system. However, Petitioner did not submit any additional documentation.

Overall, the evidence supports the Department's determination to close and sanction the Petitioner's FIP case for noncompliance with PATH program requirements. It was uncontested that from the beginning of the 21 day AEP, Petitioner was aware of the need to resolve the issues regarding child care and transportation. Petitioner was approved for CDC and had been provided with a list of 44 participating CDC providers. Petitioner's assertion that she contacted all 44 providers and still could not make child care arrangements was not fully supported by the documentary evidence. Similarly, there was insufficient documentation to establish good cause based on a lack of transportation or a long commute. Petitioner was given gas money reimbursement for rides. Petitioner did not provide documentation to support that her commute would be over three hours including child care despite the record being left open at Petitioner's request. The above cited BEM 233A policy requires a claim of good cause to be verified and documented. There was not sufficient credible evidence to establish good cause

for Petitioner's non-compliance of failing to attend PATH orientation on October 24, 2016.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it closed and sanctioned Petitioner's FIP case for noncompliance with PATH program requirements.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it closed and sanctioned the Petitioner's FIP case for noncompliance with PATH program requirements.

Accordingly, the Department's decision is **AFFIRMED**.

CL/mc



Colleen Lack
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

[REDACTED]

Petitioner

[REDACTED]